

DF 2000-0192

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

DOCKET NUMBER: 98-08-R

Jefferson Smurfit Corporation (U.S.)  
North 8<sup>th</sup> Street  
Fernandina Beach  
Amelia Island, Florida 32034  
EPA ID No. FLD 004 056 230

PROCEEDING UNDER SECTION  
3013 OF THE RESOURCE  
CONSERVATION AND RECOVERY  
ACT, 42 U.S.C. § 6934

FLD 004 056 230

ADMINISTRATIVE ORDER ON CONSENT  
FOR MONITORING, TESTING, ANALYSIS AND REPORTING

I. PRELIMINARY STATEMENTS

1. This Administrative Order on Consent (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 3013 of the Resource Conservation Recovery Act (RCRA), 42 U.S.C. § 6934, as amended. The authority vested in the Administrator to issue orders under Section 3013 of RCRA, 42 U.S.C. § 6934, has been delegated to the director of the Waste Management Division, United States Environmental Protection Agency (EPA), Region 4.

2. This Order is issued to Jefferson Smurfit Corporation (U.S.) (Jefferson Smurfit or Respondent), formerly known as Container Corporation of America, a company doing business in the State of Florida (the State) and which is incorporated under the laws of the State of Delaware. Jefferson Smurfit is the owner and operator of the Jefferson Smurfit facility (the Facility), located at North 8<sup>th</sup> Street, Fernandina Beach, Amelia Island, Florida 32034.

3. Respondent does not admit jurisdiction under 42 U.S.C. § 6934, but agrees not to contest EPA's jurisdiction to issue this Order or to enforce its terms. Further, Respondent will not contest EPA's jurisdiction to: compel compliance with this Order in any subsequent enforcement proceedings, either administrative, judicial, or criminal; require Respondent's full or interim compliance with the terms of this Order; or impose sanctions for violations of this Order. By agreeing not to contest EPA's RCRA jurisdiction under 42 U.S.C. § 6934 with respect to the matters identified in this Paragraph, Respondent is not waiving its right to contest EPA's assertion of jurisdiction over any other matter concerning the Facility, including but not limited to EPA's authority to issue any other order under RCRA for the Facility in the future.

4. Respondent agrees to undertake all actions required by the terms and conditions of this Order, including any portions of this Order incorporated by reference. Subject to Paragraph I.3 of this Order, Respondent waives any rights to confer on this matter pursuant to Section 3013(c) of RCRA, 42 U.S.C. § 6934 (c), and consents to the issuance of this Order pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934. EPA agrees that Respondent is not required under this Order to perform any corrective action, remediation, removal or other cleanup activities to address any hazardous waste, hazardous constituents or releases of the same at the Facility, including but not limited to releases of hazardous constituents that may be identified as a result of the sampling activities required by this Order.

5. EPA, acting pursuant to the authority vested in the Administrator by Section 3013 of RCRA, 42 U.S.C. § 6934, duly delegated, and having been presented with information from which a determination has been made that the presence and/or release of hazardous wastes, as defined by section 1004(5) of RCRA, 42 U.S.C. § 6903(5), at Jefferson Smurfit's Facility, may present a substantial hazard to human health or the environment, hereby orders Respondent to conduct monitoring, testing, analysis, and reporting to ascertain the nature and extent of such hazard. In entering into this Order, the mutual objective of EPA and Respondent is to utilize resources that would otherwise be spent on litigation to implement an agreed upon soil sampling plan for the Facility, thereby resolving this matter through settlement, without any admission of violation, or any adjudication of any issue of fact or law, including but not limited to the applicability of RCRA requirements to Respondent. The mutual objectives of EPA and Respondent are best accomplished by issuance of this Order requiring Respondent to implement the activities identified in this Order and the attached "Sampling Workplan for the Fernandina Beach, Florida Facility" (the Workplan).

6. This Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by Jefferson Smurfit and the public at EPA's regional office at Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303.

## II. PARTIES BOUND

1. This Order shall apply to and be binding upon Respondent, and its agents, successors, assigns, trustees, receivers, and upon all consultants acting on behalf of the Respondent.

2. No change in ownership or corporate or partnership status relating to the Facility will in any way alter Respondent's responsibility under this Order. Any conveyance of title, easement, or other interest in the Respondent's Facility or a portion of the Respondent's Facility, shall not affect Respondent's obligation under this Order. Respondent shall be responsible for and liable for any failure to carry out all activities required by Respondent by the terms and conditions of the Order, regardless of Respondent's use of employees, agents, contractor, or consultants to perform any such tasks.



3. Respondent shall provide a copy of this Order to all contractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within fourteen (14) days of the effective date of this Order or the retention of such person(s), whichever occurs later, and shall condition all such contracts on compliance with the terms of this Order.

4. Respondent shall give written notice of this Order to any successor in interest prior to the transfer of ownership or operation of the Facility or a portion thereof, and shall notify EPA within ten (10) working days prior to such transfer.

### III. FINDINGS OF FACTS

EPA alleges and Respondent does not admit the following:

1. Jefferson Smurfit is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and is the "owner" and "operator" of a "facility" located at North 8<sup>th</sup> Street, Fernandina Beach, Nassau County, Florida, (Facility) as those terms are defined in 40 C.F.R. § 260.10.

2. Jefferson Smurfit owns and operates an unbleached Kraft pulp and paperboard mill in Nassau County, Florida. The Facility encompasses approximately 110 acres and is bounded on the west by the Amelia River, on the east by a residential community, on the north by marshland, and on the south by the City of Fernandina Beach.

3. On August 13, 1980, Jefferson Smurfit submitted to EPA its notification of hazardous waste activity (EPA Form 8700-12), pursuant to Section 3010 of RCRA.

4. Jefferson Smurfit generates several hazardous waste streams as follows: spent fluorescent light tubes, which may be characteristically hazardous for the constituent mercury (D009); solvent contaminated rags which may be characteristically hazardous for ignitability (D001) or which may contain one or more listed hazardous waste streams (F001, F002, F004, F005); lead dross, which may be characteristically hazardous for the constituent lead (D008); and residue from punctured aerosol cans which may be characteristically hazardous for ignitability (D001) or which may contain one or more listed hazardous waste streams (F001, F002, F004, F005). Each waste stream is collected in individual satellite accumulation containers at the point of generation, in accordance with 40 C.F.R. § 262.34. When the containers are full, they are either moved to a less-than-90-day container storage area or picked up for removal by Jefferson Smurfit's hazardous waste contractor.

5. Hazardous waste identified in Paragraph 4 above are "stored," as that term is defined in Section 1004 of RCRA, 42 U.S.C. § 6903(33), by Jefferson Smurfit prior to shipment offsite.

6. Hazardous wastes are defined as set forth in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and include hazardous constituents. Hazardous constituents are those listed in Appendix VIII to 40 C.F.R. Part 261. It is EPA's position that hazardous constituents are also any constituent identified in Appendix IX to 40 C.F.R. Part 264. Jefferson Smurfit does not admit that hazardous constituents include those constituents identified in Appendix IX to 40 C.F.R. Part 264, but agrees not to contest this point solely for purposes of implementation and / or enforcement of this Order. By agreeing for purposes of this Order not to contest EPA's position that the constituents identified in Appendix IX of 40 C.F.R. Part 264 are hazardous constituents, Jefferson Smurfit is not waiving its rights to contest this issue in any other matter concerning the Facility.

7. Following paragraphs 8 through 20 are descriptions of areas at the Facility which EPA alleges may have released hazardous waste or hazardous constituents and which EPA alleges require the work that is described in the attached Workplan.

8. Jefferson Smurfit's facility operates five boilers as follows:

<u>Boiler I.D.</u>	<u>Primary Fuels Burned</u>
No. 5 power boiler	Bark/wood, wastewater wood fiber residuals, No. 6 fuel oil
No. 7 power boiler	Bark ash from No. 5 boiler, coal
No. 4 recovery boiler	Black liquor
No. 5 recovery boiler	Black liquor
Package boiler	No. 2 fuel oil

9. Air emissions from Jefferson Smurfit's power and recovery boilers are routed through electrostatic precipitators to control particulate emissions. Carbonaceous ash from the No. 5 power boiler, which has fuel value, is staged in the Boiler Ash Accumulation Area prior to its use as a feed stock for the No. 7 power boiler. Ash that is not used in the No. 7 power boiler is sold for beneficial re-use. The Boiler Ash Accumulation Area consists of bare earth with no secondary containment, no liners, and no runoff/runoff controls to prevent rainwater or stormwater from entering and passing through the ash pile; however, no evidence of a release in the Boiler Ash Accumulation Area was observed during a visual inspection of the Facility on July 23-25, 1997. Storm water runoff and runoff in this area is retained on-site or treated in the Facility's permitted wastewater treatment system. Rain falling on the boiler ash pile can percolate through the pile onto the unprotected ground below, carrying any hazardous constituents present in the ash into nearby soils and groundwater. Storm water washing through the ash pile may have the potential to carry the ash and any hazardous constituents in the ash into the storm water drainage ditches, which flow into the Facility's wastewater



treatment system. Treated effluent is discharged to the Amelia River. Ash from the No. 5 and No. 7 power boilers has been tested using the Toxicity Characteristic Leaching Procedure ("TCLP"). The results of TCLP testing show that the ash does not exhibit the characteristic of toxicity. The ash contains low levels of arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver.

10. Process water from the manufacturing process and some storm water is routed through a series of process trenches and sewers, known as the Process Sewer System, to the Facility's wastewater treatment plant. This process water contacts various chemicals, oils, and other substances used in the manufacturing process; thus, the process water entering the wastewater treatment plant might contain hazardous constituents associated with the manufacturing chemicals, oils and other substances. The process trenches also pick up any spills of black liquor, green liquor, slaker grits, or white liquor. 40 C.F.R. § 261.4(a)(6) exempts from consideration as a solid waste, and consequently a hazardous waste, those pulping liquors that exhibit a hazardous waste characteristic and which are reclaimed in a pulping liquor recovery furnace then routed back for reuse in the process. However, this exemption does not apply to pulping liquors which cannot be recovered for reuse, such as those which spill onto the ground. Heavy black liquor can be corrosive. Piping material used for some of the process sewers is concrete. Concrete piping might react in a corrosive environment. A corrosive environment might adversely impact pipe joint integrity. Piping or joints which have breached might release untreated process water containing hazardous waste or hazardous constituents into the soils and groundwater in the vicinity of the pipe. Some portions of the Facility's process sewer system have been in place more than 50 years. No evidence of a release from the Facility's sewers or trenches was observed during a visual inspection of the Facility conducted on July 23-25, 1997.

11. The Facility has constructed a Spill Containment/Control System to contain spills and channel lost process material, primarily black liquor, back to the process. It consists of a series of spill tanks, concrete secondary containment structures around spill and process tanks, and a network of concrete drains and underground piping located in the areas of the No. 5 evaporators, the C-line washers, the Kaymr digester, the heavy black liquor storage area, and the paper mill. During a visual inspection of the Facility conducted on July 23-25, 1997, potential integrity problems were observed in the concrete secondary containment in the vicinity of the No. 5 Multiple Effect Evaporator System. Additionally, the spill tank in this area was buckled, was stained in various locations, and had dents and punctures repaired with metal squares. Facility personnel have stated that the tank is operated below the level where the buckling has occurred. Releases from the Spill Containment Area might carry process materials, including white liquor and black liquor, into the soils and groundwater beneath the area of the spill. 40 C.F.R. § 261.4(a)(6) exempts from consideration as a solid waste, and consequently a hazardous waste, those pulping liquors that exhibit a hazardous waste characteristic and which are reclaimed in a pulping liquor recovery furnace then routed back for reuse in the process. However, this exemption does not apply to pulping liquors which cannot be recovered for reuse, such as those which spill onto the ground. Heavy black liquor may



be corrosive. Other process spills have the potential to carry hazardous constituents associated with chemicals used in the manufacturing process.

12. The Facility's wastewater treatment system consists of a series of treatment units which operate on a continuous feed basis. The train of wastewater treatment units includes a grit chamber, primary clarifier, wastewater cooling tower, UNOX basin, two secondary clarifiers, blend tanks, and two screw presses. Treated effluent is discharged to the Amelia River under an NPDES discharge permit which sets effluent limits. Wastewater treatment sludge from the primary and secondary clarifier have been tested using the TCLP. The results of this testing show that sludge from the primary and secondary clarifiers do not exhibit the characteristic of toxicity. The wastewater sludge contains low levels of arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver; however, the Facility has not analyzed the sludge for hazardous waste organics. Sludge from the primary clarifier and the secondary clarifier is collected and either used as a fuel in the No. 5 power boiler or is applied as a soil conditioner to the Facility's timberlands. Prior to being used as a fuel or a soil conditioner, the sludge is, or has in the past been, stored in one of three wastewater treatment sludge staging areas. The first sludge staging area is located adjacent to the northern end of the UNOX reactors. The second area is located immediately south of the secondary clarifiers. All wastewater sludge has been removed from this area. The third area consists of four temporary storage areas located immediately west of the primary clarifier. Each of these three temporary storage areas is part of the mill's NPDES permitted wastewater treatment system. None of the sludge storage areas are equipped with a liner or with runoff/runoff controls to prevent hazardous constituents in the sludge from being carried by rainfall or storm water into the soils, the groundwater, or nearby surface water bodies. The management of the sludge in the storage areas may have caused a release of hazardous constituents; however no evidence of a release was observed during a visual inspection of the Facility on July 23-24, 1997.

13. At times, operation of the wastewater treatment system resulted in unpermitted releases of untreated or partially treated wastewater or wastewater solids as follows:

- a. In April 1985, a pump blockage resulted in overflows from the grit chamber onto the surrounding ground.
- b. In May 1987, a structural failure in the primary clarifier resulted in the release of untreated material onto the ground.
- c. In August 1987, November 1995, March 1996, May 1996, and July 1996, the Facility discharged wastewater exceeding its NPDES permitted discharge limits. This partially treated or untreated wastewater entered the Wastewater Effluent Open Ditch, an unlined earthen conveyance, prior to discharge to the Amelia River.

Jefferson Smurfit resolved each incident listed above in cooperation with the Florida Department of Environmental Protection ("FDEP").

14. The potential releases described above in Paragraph No.13 could carry untreated or partially treated wastewater and hazardous constituents into the soils and possibly the groundwater beneath the area of the potential release. In the past, the release of partially treated or untreated wastewater from the wastewater treatment plant would first enter the Wastewater Effluent Open Ditch, which was an unlined earthen conveyance. Untreated or partially treated waster could have release hazardous constituents into the soils lining the ditch. Jefferson Smurfit eliminated the Wastewater Effluent Open Ditch in October 1997 when it completed construction on a diffuser pipe for handling treated effluent.

15. The Facility's storm water ditch located on the south end of the property near the woodyard is dredged periodically. During the visual site inspection conducted on July 23-25, 1997, soils generated during dredging were temporarily stored prior to off-site disposal directly on the ground in the south woodyard area of the Facility immediately west of the railroad tracks and immediately south of the diesel and gasoline tank farm. Dredged soils might contain any hazardous constituents carried by the storm water.

16. The Facility maintains two Atlas Storage Bins, both of which are located immediately south and southwest of the grit chamber of the wastewater treatment plant. Each of these bins is a silo shaped structure elevated on metal pilings. During a visual site inspection of the Facility conducted on July 23-25, 1997, several 55-gallon drums were observed beneath the bins. The drums were rusty and partially covered by woodchips, sawdust and earth. Soils immediately surrounding one of the drums were stained, indicating a potential release of materials from the drums. Since July 1997, Jefferson Smurfit has voluntarily removed the drums, excavated soils and is managing this area in accordance with FDEP's petroleum investigation and cleanup laws.

17. Rejects from the Facility's Recycle Plant's pulping process are staged in the Recycle Rejects Bunker prior to shipment offsite to Class 1 solid waste landfill. The Recycle Rejects Bin consists of a concrete bunker measuring approximately 10 yards by 8 yards. Materials placed in the Rejects bin include glass, plastic, metal bailing strips, rope and trace amounts of corrugated material separated from the bulk corrugated material used in recycling. During the visual site inspection conducted on July 23-25, 1997, the recycle plant's tail rope/coil was out of service, causing some liquid from the Recycle Rejects Bin to flow-onto the soils adjacent to the concrete. Previous TCLP analysis indicates that Recycle rejects do not exhibit the characteristic of toxicity, but contain low leachable levels of hazardous constituents barium and cadmium. If present in the liquid flowing from the bin on the date of the visual inspection, these constituents might enter the soil and groundwater adjacent to and beneath the bin.

18. The Facility uses coal to fire its No. 7 power boilers. From approximately 1994 until 1997, coal ash was temporarily stored on the north side of the UNOX building. Coal is transported to the facility and conveyed to silos for storage by an overhead conveyance system. Although the conveyor is covered, from time to time coal falls from the conveyance system to the bare soils below. Wind dispersion can increase the area of coal fallout. At the



time of the visual site inspection on July 23-25, 1997, coal and coal dust were visible throughout the area, particularly in the southern portion of the area in the vicinity of the coal crusher. Coal "fall out" is routinely collected by the mill and shipped off-site for beneficial re-use. The mill has TCLP data for raw, unburned coal crusher rejects and coal silo cleanup material. This data shows that these materials do not exhibit the characteristic of toxicity. The chemical composition of the coal crusher rejects and coal silo cleanup material is the same as the composition of the material in the vicinity of the coal crusher. The Facility's coal can contain low levels of the hazardous constituents arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver.

19. During recent excavation for a new road (Chipper Road) in the central portion of the Facility south of the No.1 stacker reclaimer, the Facility discovered petroleum contaminated soils. Remediation efforts were underway at the time of the visual site inspection on July 23-25, 1997. The site is currently subject to a groundwater monitoring plan required by the Florida Department of Environmental Protection.

20. The hazardous wastes or hazardous constituents identified in this Section, and other hazardous wastes or hazardous constituents which may be present at the facility, may have effects on human health or the environment as described in Marshall Sittig, Handbook of Toxic and Hazardous Chemicals and Carcinogens (2<sup>nd</sup> ed. 1985).

#### IV. DETERMINATIONS

1. Based upon the foregoing Finding of Fact, and pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, EPA has hereby determined that the Jefferson Smurfit facility, owned and operated by Respondent, is a facility at which hazardous wastes are present and at which hazardous wastes have been generated, treated, stored, and disposed.

2. Based upon the foregoing Finding of Fact, and pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, EPA has further determined that there may be a substantial hazard to human health or the environment due to the presence of hazardous wastes and/or constituents and potential releases of hazardous wastes and/or constituents from the Jefferson Smurfit Facility.

3. EPA has also determined that Respondent, as owner and operator of the Jefferson Smurfit Facility, is the party responsible for conducting the actions ordered herein, which are necessary to ascertain the nature and extent of any hazard to human health or the environment.

#### V. ORDER

1. Based upon the Finding of Fact and Determinations as set forth above, Respondent is hereby ordered, pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, to implement the Workplan, which is attached hereto as Attachment 1 and incorporated by reference herein, in the manner and by the dates specified in the Workplan. Respondent



shall begin implementation of the Workplan within sixty (60) calendar days from the effective date of this Order.

2. Respondent shall provide site access for employees, agents, and contractors of EPA at all reasonable times for purposes of inspection and verifying compliance with the provisions of this Order, in accordance with and pursuant to the authority of Section 3007 of RCRA, 42 U.S.C. § 6927.

3. Jefferson Smurfit shall consider and address the guidelines established by EPA which are identified in Attachment 2 to this Order, and which are incorporated by reference herein.

4. Reports required to be submitted under this Order shall be mailed to:

Jewell Grubbs, Chief  
Enforcement and Compliance Branch  
Waste Management Division  
United States Environmental Protection Agency  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104

and

Ashwin Patel, Director  
Hazardous Waste Regulation  
Florida Department of Environmental Protection  
7825 Baymeadows Way, Suite 200B  
Jacksonville, Florida 32256

5. Any changes or modifications proposed by Respondent to the approved plans and timetables required in Paragraph 1 of this Section must be approved, or may be modified and approved, by EPA prior to implementation.

#### VI. PROJECT COORDINATOR

1. EPA Region 4 and Respondent each have designate a Project Coordinator, as identified below. The EPA Project Coordinator will be EPA's designated representative for the facility. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in his or her absence. All communications between Respondent and EPA, and all documents, reports, approvals and other correspondences concerning the activities performed pursuant to this Order, shall be direct to the Project Coordinators.

2. The EPA Project Coordinator is:

John Kroske  
South Enforcement and Compliance Section  
Enforcement and Compliance Branch  
Waste Management Division  
U.S. EPA, Region 4  
SNAFC, 61 Forsyth Street, SW  
Atlanta, Georgia 30303

Respondent's Project Coordinator is:

Richard N. Bowman  
Manager of Environmental Services  
Jefferson Smurfit Corporation (U.S.)  
North 8<sup>th</sup> Street  
Fernandina Beach, Florida 32034

3. EPA will provide written notice to Respondent of any change in the EPA Region 4 Project Coordinator for Respondent's facility. However, the absence of an EPA Project Coordinator shall not be cause for stoppage of work to be performed under this Order.

4. Respondent shall provide at least ten (10) calendar days written notice to EPA prior to changing its Project Coordinator.

## VII. EPA APPROVALS

1. EPA will provide Respondent with its written approval, approval with conditions and/or modifications, disapproval or disapproval with comments for any proposed Workplan amendments, and any other documents submitted pursuant to or required by this Order. EPA will provide a statement of reasons for any approval with conditions and/or modifications, disapproval or disapproval with comments.

2. Except as provided in Section XII (Dispute Resolution) and Section XIII (Force Majeure and Excusable Delay), Respondent shall revise any Workplan amendment in accordance with EPA's written comments within thirty (30) calendar days of Respondent's receipt of EPA's written comments unless EPA has specified an alternative due date, in which case Respondent shall submit to EPA any revised Workplan amendment in accordance with the due date specified by EPA. Revised submittals are subject to EPA approval, approval with conditions and/or modifications, disapproval or disapproval with comments.

3. Upon receipt of EPA's written approval, Respondent shall commence work and implement any approved Workplan amendment in accordance with the schedule and provisions contained therein. In the event that no schedule is contained in an approved



Workplan amendment, then Respondent shall commence work and implementation of the Workplan amendment within thirty (30) calendar days of receipt of EPA's written approval of the Workplan amendment.

4. Any EPA-approved Workplan amendment shall be deemed incorporated into this Order. Prior to this written approval, no written Workplan amendment shall be construed as approved and final. Oral advice, suggestions or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

#### VIII. QUALITY ASSURANCE

1. Respondent shall follow the EPA Region 4 Environmental Compliance Branch Standard Operating Procedures and Quality Assurance Manual, and other relevant EPA guidance for sampling and analysis. Any deviations from the approved written Workplan must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.

2. Respondent has selected Foster Wheeler Environmental Corporation and Columbia Analytical Laboratories, Inc. to perform analytical work required by this Order. EPA approves of these selections. If Respondent chooses to have analytical work required by this Order performed by a contract laboratory other than Foster Wheeler or Columbia, Respondent shall, in advance of the work being performed:

(a) Provide the names, addresses, and telephone numbers of all analytical laboratories that Respondent proposes to use;

(b) Provide data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support the intended use(s);

(c) Monitor to ensure that high quality data is obtained by its consultants or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analyses perform such analyses according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-846)," or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify all such methods in the applicable written proposal or workplan. EPA may reject any data that does not meet the requirements of approved written proposals, workplans, or EPA analytical methods, and may require resampling and additional analysis; and

(d) Ensure that the laboratories it uses for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA. EPA may conduct a performance and quality assurance/quality control audit of the laboratories chosen by the Respondent before, during, or after sample analysis. Upon request by EPA, Respondent shall have its laboratories perform analyses of samples provided by

EPA to demonstrate laboratory performance. If the audit reveals significant deficiencies in a laboratory's performance or quality assurance/quality control, resampling and additional analysis may be required.

#### IX. SAMPLING AND DATA/DOCUMENT AVAILABILITY

1. Respondent shall submit to EPA the results of all sampling, tests or other data generated by Respondent or its agents, consultants or contractors pursuant to the Workplan which is part of this Order.

2. Notwithstanding any other provision of this Order, EPA retains all of its information gathering and inspection authorities and rights, including the right to bring enforcement actions related thereto, under RCRA, CERCLA, and any other applicable statutes or regulations.

3. Respondent shall notify EPA in writing at least fourteen (14) calendar days before engaging in any field activities, such as well drilling, installation of equipment, or sampling. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from the EPA Project Coordinator or, if the EPA Project Coordinator is unavailable, his or her immediate supervisor, to commence such activities immediately. At the request of EPA, Respondent shall provide, or allow EPA or its authorized representative to take, split or duplicate samples of all samples collect by Respondent pursuant this Order. Similarly, at the request of Respondent, EPA shall allow Respondent or its authorized representative(s) to take, split or duplicate samples of all samples collected by EPA under this Order.

4. Respondent may assert a confidentiality claim covering all or part of any information submitted to EPA pursuant to this Order. Any assertion of confidentiality must be accompanied by information that satisfies 40 C.F.R. § 2.204(e)(4) or such claim shall be deemed waived. Information determined by EPA to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with regard to any physical or analytical data.

#### X. ACCESS

1. Subject to compliance with Respondent's environmental, health and safety procedures, EPA, its contractors, employees, and/or any duly designated EPA representatives are authorized to enter and freely move about all property at the facility pursuant to this Order for the purposes of, inter alia: interviewing facility personnel and contractors regarding field work conducted pursuant to this Order; inspecting records, operating logs and contracts that are related to the facility and necessary to evaluate Respondent's compliance with the terms of this Order; reviewing the progress of the Respondent in carrying out the terms of this Order; conducting such tests, sampling or



monitoring as EPA or its Project Coordinator deems necessary pursuant to Paragraph IX.3 of this Order; using a camera, sound recording or other documentary type equipment; and verifying the reports and data submitted to EPA by the Respondent. Respondent agrees to provide EPA and its representatives access at all reasonable times to the facility and, subject to the paragraph below, to any other property to which access is required for implementation of this Order. Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of the Respondent or its contractors or consultants.

2. To the extent that work being performed pursuant to this Order must be done beyond the facility property boundary, Respondent shall use its best efforts to obtain site access agreements necessary to complete work required by this Order from the present owner(s) of such property within thirty (30) calendar days of the date that the need for access becomes known to Respondent. Best efforts as used in this paragraph shall include, at a minimum, a certified letter from the Respondent to the present owner(s) of such property requesting access agreement(s) to permit Respondent and/or EPA and its authorized representatives access to such property, and the payment of reasonable sums of money in consideration of granting such access. Any such access agreements shall be incorporated by reference into this Order and shall provide for access by EPA and its representatives. Respondent shall ensure that EPA's Project Coordinator has a copy of any such access agreements. In the event that agreements for access are not obtained within thirty (30) calendar days of approval of any workplan for which access is required, or of the date that the need for access became known to the Respondent, Respondent shall notify EPA in writing within ten (10) calendar days thereafter of both the efforts undertaken to obtain access and the failure to obtain such agreements. EPA may, at its discretion, assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake EPA-approved work on such property.

3. Respondent shall indemnify EPA as provided in Section XIX below for any and all claims arising from activities on such property.

4. Nothing in this section limits or otherwise affects EPA's right of access or entry pursuant to applicable law, including RCRA and CERCLA.

#### XI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

1. Unless there has been a written modification by EPA of a compliance date, a written modification by EPA of an approved written proposal or workplan condition, or excusable delay as defined in Section XIII (Force Majeure and Excusable Delay), if Respondent fails to comply with any term or condition set forth in this Order in the time or manner specified herein, Respondent shall pay stipulated penalties as set forth below upon written demand from EPA:

a. For failure to commence, perform, and/or complete field work in a manner acceptable to EPA or at the time required pursuant to this Order; and/or for failure to complete and submit any written proposals, workplans or reports- (other than progress reports) in a manner acceptable to EPA or at the time required pursuant to this Order: \$1,500 per day for the first seven days of such violation, \$2,000 per day for the eighth through twenty-first day of such violation, and \$2,500 per day for each day of such violation, thereafter;

b. For failure to comply with any other provision of this Order in a manner acceptable to EPA: \$500 per day for the first seven days of such violation, \$1000 per day for the eighth through twenty-first day of such violation, and \$1,500 per day for each day of such violation, thereafter.

For purposes of this Order, the phrase "in a manner acceptable to EPA" shall mean that a submittal or completed work meets good engineering practices, the terms and conditions of this Order, the Workplan and/or EPA's guidance and/or policy documents referenced in Attachment 2 to this Order.

2. Except as provided in Paragraph 5 of this Section, penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the day of correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Order. Penalties shall continue to accrue regardless of whether EPA has notified the Respondent of a violation.

3. Except as provided in Paragraph 5 of this Section, all penalties owed to the United States under this section shall be due and payable within 30 calendar days of the Respondent's receipt from the EPA of a written demand for payment of the penalties. Such a written demand will describe the violation and will indicate the amount of penalties due.

4. Interest shall begin to accrue on any unpaid stipulated penalty balance beginning on the thirty-first calendar day after the Respondent's receipt of EPA's demand letter. Interest shall accrue at the Current Value of Funds rate established by the Secretary of Treasury. Pursuant to 31 U.S.C. § 3717, an additional penalty of 6% per annum on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for 90 or more days.

5. Respondent may dispute EPA's assessment of stipulated penalties by invoking the dispute resolution procedures set forth in Section XII of this Order. The stipulated penalties in dispute shall accrue, but need not be paid, during the dispute resolution period, unless it is decided that Respondent invoked the dispute resolution provisions of this Order in bad faith. Should the dispute resolution be decided in Respondent's favor, stipulated penalties will not be considered to have accrued during the dispute resolution period. Respondent shall pay stipulated penalties and interest, if any, in accordance with the dispute resolution decision and/or agreement. Respondent shall submit such payment



to EPA within thirty (30) days of receipt of such resolution in accordance with Paragraph 3 of this Section.

6. All penalties shall be made payable by certified, corporate or cashier's check to the **Treasurer, United States of America** and shall be remitted to:

U.S. Environmental Protection Agency  
Region 4  
P.O. Box 100142  
Atlanta, Georgia 30384

All such checks shall reference the name of the facility, Respondent's name and address, and the EPA docket number of this action. Copies of all such checks and letters forwarding the checks shall be sent simultaneously to the EPA Project Coordinator.

7. The payment of penalties shall not alter in any way Respondent's obligation to comply with the terms and conditions of this Order.

8. Except as provided herein, the stipulated penalties set forth in this section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the terms and conditions of this Order.

9. No payments under this section shall be tax deductible for federal tax purposes.

## XII.. DISPUTE RESOLUTION

1. The parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion. The parties agree that the procedures contained in this section are the sole procedures for resolving disputes arising under this Order.

2. If Respondent disagrees, in whole or in part, with any written decision (Initial Written Decision) by EPA pursuant to this Order, Respondent's Project Coordinator shall notify the EPA Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objections in writing. Respondent's written objections must be directed to the EPA Project Coordinator and may be carbon copied to the Chief, RCRA Enforcement and Compliance Branch. This written notice must be mailed to such person(s) within fourteen (14) days of Respondent's receipt of the Initial Written Decision. Respondent's written objection must set forth the specific points of the dispute, the position Respondent claims should be adopted as consistent with the requirements of this Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. If Respondent fails to follow any

of the requirements contained in this paragraph then it shall have waived its right to further consideration of the disputed issue.

4. EPA and Respondent shall have thirty (30) days from EPA's receipt of Respondent's written objections to attempt to resolve the dispute through formal negotiations. This time period may be extended by EPA for good cause. During such time period (Negotiation Period), Respondent may request a conference with the Chief, RCRA Enforcement and Compliance Branch to discuss the dispute and Respondent's objections. EPA agrees to confer in person or by telephone to resolve any such disagreement with the Respondent as long as Respondent's request for a conference will not extend the Negotiation Period.

5. If the parties are unable to reach agreement within the Negotiation Period, EPA shall provide to Respondent its written decision on the dispute (EPA Dispute Decision). Such decision shall be incorporated into and become an enforceable element of this Order.

6. If the parties reach an agreement at any time during the informal review or Negotiation Period, such agreement shall be reduced to writing, and shall be incorporated into and become an enforceable element of this Order.

7. Except as provided in Sections XI and XIII, the existence of a dispute as defined in this section and EPA's consideration of matters placed into dispute shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Order during the pendency of the dispute resolution process.

### XIII. FORCE MAJEURE AND EXCUSABLE DELAY

1. Force majeure, for purposes of this Order, is defined as any event arising from causes not foreseen and beyond the control of the Respondent or any person or entity controlled by Respondent, including but not limited to Respondent's contractors, that delays or prevents the timely performance of any obligation under this Order despite Respondent's best efforts to fulfill such obligation. The requirement that Respondent exercise "best efforts to fulfill such obligation" shall include, but not be limited to, best efforts to anticipate any force majeure event and address it before, during, and after its occurrence, such that any delay or prevention of performance is minimized to the greatest extent possible. Force majeure does not include increased costs of the work to be performed under this Order or financial inability to complete the work.

2. If any event occurs or has occurred that may delay the performance of any obligation of this Order, whether or not caused by a force majeure event, Respondent shall contact by telephone and communicate orally with EPA's Project Coordinator or, in his or her absence, the Project Coordinator's immediate supervisor, within 48 hours of the time Respondent's Project Coordinator first knew or should have known that the event might cause a delay. Within five (5) calendar days thereafter, Respondent shall provide to EPA in writing the anticipated duration of the delay; all actions taken or to be



taken to prevent or minimize the delay; all other obligations affected by the force majeure event, and what measures, if any, taken or to be taken to minimize the effect of the event on those obligations; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event. Respondent's Project Coordinator shall be deemed to have notice of any circumstances of which its contractors had or should have had notice. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or the extension sought was or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Respondent complied with the requirements of this Section. If Respondent satisfies this burden, the time for performance of such obligation will be extended by EPA for such time as is necessary to complete such obligation.

3. If EPA determines that the delay or anticipated delay is attributable to a force majeure event, the time for performance of such obligation under this Order that is affected by the force majeure event will be extended by EPA for such time as EPA determines is necessary to complete such obligation. An extension of the time for performance of such obligation affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation, unless Respondent can demonstrate that more than one obligation was affected by the force majeure event. If EPA determines that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of such obligations affected by the force majeure event.

#### XIV. RESERVATION OF RIGHTS

1. EPA expressly reserves all rights and defenses it may have, including the right both to disapprove of work performed by Respondent pursuant this Order and to request that Respondent perform tasks, in addition to those stated in Section VII above (Work to be Performed), that are required to fulfill the purposes of this Order as stated in Section I.

2. Except as provided in Section XI (Delay in Performance/Stipulated Penalties), EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Order, including without limitation the assessment of penalties under Section 3013(e) of RCRA, 42 U.S.C. §6934(e). This Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under



RCRA, CERCLA or any other statutory, regulatory or common law authority of the United States. Nothing in this Order shall diminish, impair, or otherwise adversely affect the authority of the EPA to enforce the provisions of this Order.

3. This Order shall not limit or otherwise preclude EPA from taking additional enforcement action pursuant to RCRA, or any other available legal authority, should EPA determine that such action is warranted and necessary to protect human health and the environment.

4. Pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(d), if EPA determines that Respondent is not able to conduct the activities required by this Order, that Respondent is not able to conduct the activities contained in the EPA-approved Workplan, or that the actions carried out by the Respondent are in a manner that is not acceptable to EPA, then EPA itself may conduct monitoring, testing or analysis deemed reasonable to ascertain the nature and extent of the hazard associated with the Facility, or authorize the State to conduct such monitoring testing or analysis. Respondent may then be required to reimburse EPA for costs of such activity pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(c).

5. In the event that Respondent fails or refuses to comply with any requirement of this Order, EPA may commence a civil action in the U.S. District Court where the Respondent is doing business, pursuant to Section 3013(e) of RCRA, 42 U.S.C. § 6934(e), to require compliance with this Order and to assess a civil penalty not to exceed \$5,500 for each day during which such failure or refusal occurs.

6. If EPA determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste or hazardous constituents, or may pose a threat to human health or the environment, or if EPA determines that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this Order for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

7. This Order is not intended to be, nor shall it be construed to be, a permit; nor is this Order intended to be, nor shall it be construed to be, a ruling or determination on, or of, any issue related to any local, State or federal permit. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, CERCLA or any other applicable local, State or federal laws and regulations, including but not limited to its obligation to obtain and comply with any permit issued under RCRA or any other applicable local, State or federal laws or regulations by the State, EPA or any other entity.

8. Respondent does not admit any of the factual or legal determinations made by the EPA and reserves all rights and defenses it may have regarding liability or responsibility for conditions at the facility, with the exception of its right to contest EPA's jurisdiction to issue or enforce this Order and its right to contest the terms of this



Order. Respondent has entered into this Order in good faith without trial or adjudication of any issue of fact or law. The parties do not authorize the use of findings and/or determinations in this Order in any other matter or proceeding, except a proceeding to enforce the terms of this Order, and Respondent does not intend that anything in this Order shall be construed to be an admission of law or fact, or to be a waiver of any rights or defenses, in a dispute or action between Respondent and a third party.

9. Notwithstanding any other provision of this order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, the Division Director of the Waste Management Division, or any authorized representative of EPA, shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation of a judicial action to enforce this Order, including an action for penalties or an action to compel Respondent's compliance with the terms and conditions of this Order.

10. In any action brought by EPA for a violation of this Order, Respondent shall bear the burden of proving that EPA's actions were arbitrary and capricious.

11. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive or other appropriate relief relating to the areas to be sampled under the Workplan, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been raised in the present matter.

#### XV. OTHER CLAIMS

Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand or defense in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken or migrating from the facility. Respondent waives any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612, against the United States or the Hazardous Substance Superfund established by 26 U.S.C. § 9607 for, or arising out of, any activity performed or expense incurred pursuant this Order. Additionally, this Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 6911(a)(2).

#### XVI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, State and federal laws and

regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### XVII. INDEMNIFICATION

Respondent agrees to indemnify, and save and hold harmless, EPA, its agents and employees from any and all claims or causes of action arising solely from, or on account of, acts or omissions of Respondent or its officers, employees, agents, independent contractors, receivers, trustees and/or assigns in carrying out activities required by this Order. This indemnification shall not be construed in any way as affecting or limiting the rights or obligations Respondent, EPA or the United States under various contracts. Respondent reserves all rights it may have under the Federal Tort Claims Act.

#### XVIII. IMMINENT AND SUBSTANTIAL ENDANGERMENT

Notwithstanding any other provision of this order, an enforcement action may be brought against Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and/or any other applicable statutory or regulatory authority, should EPA find that the handling, storage, treatment, transportation or disposal of solid or hazardous waste at Jefferson Smurfit's Facility may present a imminent and substantial endangerment to human health or the environment.

#### XIX. SEVERABILITY

If any provision or authority of this Order, or the application of this Order to any party or circumstance, is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

#### XX. EFFECTIVE DATE

The effective date of this Order is the date it is signed by the Director of the Waste Management Division, EPA Region 4.

(Signature on following page)



JEFFERSON SMURFIT CORPORATION (U.S.)

W. L. Fleuniken

By:  
Title

09-14-00

Date:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 4

Richard Green

Richard Green, Director  
Waste Management Division

4/26/00

Date